The 17th November, 1994

No. 14/13/87-6Lab./830.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Super Auto India Plot No. 50, Sector-6, Faridabad *versus* Khem Chand.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 240/93

between

THE MANAGEMENT OF M/S SUPER AUTO INDIA, PLOT No. 50, SECTOR-6, FARIDABAD

and

THE WORKMAN NAMELY SH. KHEM CHAND S/O LEKH RAM C/O SH. B. M. GUPTA E-74, DABUA COLONY, FARIDABAD

Present :

Sh. B. M. Gupta, Authorised Representative for the workman.

Sh. Jagbir Bhadana, Authorised Representative for the management.

AWARD

In exercise of the powers conferred by clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as the Act), the Governor of Haryana referred the following Dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Government Endorsement No. 13527- 33 dated the 28th March, 1990 :—

Whether the services of Khem Chand were terminated or he had lost lien on the job by tendering resignation? The relief, to which is he entitled as result thereof?

2. The case of the workman is that he was initially appointed as Fettler on 1st April, 1983 with M/s Super Auto India Pvt. Ltd Plot No. 62, Sector-6, Faridabad. Later on this company was shifted to Plot No. 50, Sector-6, Faridabad as was also converted into two new concerns namely M/s Super Electrical & Engineering Co. and M/s Super Auto India. He had been continuously working in one and the same premises under the absolute control of one management. He has also been member of ESI and P.F. He had been getting his increments too. The management used to get signatures of workers including him in order to fabricate record for showing notional breaks in service to deny the benefit or regular service. The management illegally terminated his service with effect from 3rd August, 1988 without any reason. He is thus, entitled to be reinstated into service with contenuity in service and full back wages.

3. The management submitted written statement dated 16th October, 1990 stating therein that the workman had been appointed by them purely on temporary basis for a period of 7 months and was discharged on 3rd August, 1988. The reference is thus, bad in law as the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 10th April, 1991 reasserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties the following issues were framed :—

1. Whether the reference is bad in law.

2. As per reference.

3. Relief.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

Issues No. 1 & 2 :

8. Both of these issues are interlinked and as such are discussed together.

9. Two witness have been examined by the management. MW-1 Janak Raj, Time Keeper of M/s Super Auto India Pvt. Ltd., deposed that he had brought the ESI and P. F. returns of the company and the copies of the same were Ex. M-1 and Ex. M-2. The workman had worked in their company with effect from 1st April, 1983 to 31st December, 1987 and than had tendered resignation Ex. M-3 scribed in his own hand. The workman had also taken his full & final amount due to him through receipt Ex. M-4 and had recorded so in his hand. MW-2 K.C. Garg, Accounts Incharge of the present management deposed that the workman had sbmitted application dated 1st April, 1988 Ex, M-5 for seeking appointment and on that application Sh. S. C. Bansal Senior Manager had issued order for keeping the workman on trial basis for five months. He further stated that the workman was discharged from service on 2nd August, 1988 through letter Ex. M-6 due to heavy loss of work. The workman had refused to receive this letter and so it was sent to him through registered post as per postal receipt Ex. M-7. This letter was however, received back undeliverd with the report of refusal. In the end, he stated that the workman had earlier submitted application under section 33-C (2) of the Act claiming some amount.

10. On the other hand, the workman deposed that he was initially appointed in Super Auto (P) Ltd., and then he was appointed in Super Electrical Engineering Co. as both the Companies were working in the same plot. He further stated that he was working in Super Auto India at the time of termination of his services. In order to show that he had been working continuously during the period from 1st April, 1983 to 2nd August, 1988 he stated that he had fallen ill on 25th August, 1985 and had remained on leave upto 1st June, 1988 for which he was given amount by ESI as indicated in Ex. W-5. He further stated that he had submitted a claim under section 33-C (2) of the Act as per applications Ex. W-6 and that the management had filed reply Ex. W-7.

11. The workman himself stated in his claim satement that he was initially appointed with M/s Super Auto India (P) Ltd. The wage slips Ex. W-1 to Ex. W-4 produced by the workman were also issued by M/s Super Auto India (P) Ltd. The wage slip Ex. W-3 relate to the month of October, 1987. It is thus, clear that the workman had been working with M/s Super Auto India (P) Ltd. upto October, 1987. The workman admitted that the resignation letter dated 31st December, 1987. Ex. M-3 was scribed in his hand. He did not state in his claim statement that his resignation was taken by the management from him at the time of his appointment and as such this plea taken by him in his statement can not be accepted. Apart from this, it stands proved from the testimony of MW-1 Janak Raj that the workman had tendered resignation on 12th December, 1987 and it was accepted on 31st December, 1987 and he was also paid full & final dues through receipt Ex. M-4. MW-1 Janak Raj clearly stated in his cross examination that the payment as mentioned in receipt Ex. M-4 was paid to the workman in his presence. Thus, it stands proved that the workman had worked with M/s Super Auto (P) Ltd. for the period from 1st April, 1983 to 31st December, 1987.

12. It stands proved from the testimoney of MW-2 K. C. Garg that the workman had submitted application dated 1st April, 1988 Ex. M-5 seeking appointment with the present management. It is the case of the management itself that the workman had worked with them upto 2nd August, 1988. It is thus, clear that the workman had worked with the present management during the period from 1st April, 1988 to 2nd August, 1988. The evidence led by the workman also strengthen this position as the wage slip mark A issued by the present management relates to the month of April, 1988 and the workman had also claimed the arrear of wages for the month of July, 1988 August, 1988 and bonus for the year 1988-89 by filing application dated 31st May, 1990 under section 33-C(2) of the Act. The written statement dated 16th August, 1990 Ex. M-7 submitted by the management does not depict anything in favour of the workman. Thus, it emerges from the position discussed above that the workman had not been the employment of the present management during the period from 1st January, 1988 to 31st March, 1988.

13. To counter the aforesaid position Sh. B. M. Gupta authorised representative of the workman vehemently urged that it stands proved from the testimony of the workman supported by the statement of WW-2 Ram Chander Verma that the workman was paid medical allowance amounting to Rs. 280 by the ESI on account of illness of the workman for 14 days with effect from 25th May, 1988 to 9th June, 1988, when he was in the service of the present management. WW-2 Ram Chander Verma also clearly stated that such medically allowance could only be given to a workman if he had rendered

service for 9 months. Thus, it stands proved that the workman had been in the service of the present management atleast for the period of 9 months prior to 25th May, 1988. This plea can not be accepted for two reasons. Firstly WW-2 Ram Chander Verma did not produce the complete record relating to the payment of this amount on the ground that it had been weeded out. Secondly, if this contention is accepted then it will have to been taken that the workman was employed under the presence management during the period from 24th August, 1987 to 25th August, 1988. The workman has himself placed on record the wages slip W-3. which shows that he was employed with M/s Super Auto India Pvt. Ltd, during the month of October, 1987. That being so, the workman could not be in the service of the present management till October, 1987. This position clearly shows that the workman was paid the medical allowance due some misunderstanding on the basis of ESI cared issued to him by M/s Super Auto India (P) Ltd.

14. It is further noticed that the workman himself admitted in his cross-examination that he was under matric but he could read and write Devnagari script properly. He also admitted that all the three companies working in the same premises were maintaining separate accounts. He also clearly admitted that he used to get the wages from the company in which he used to work at particular time. This position clearly shows that the workman had been working in the different companies situated in one in the same premises for the period mentioned above. It stands proved from the position mentioned above that he had rendered service Super Auto (P) Ltd. for the period from 1st April, 1983 to 31st December, 1987 and had then tendered resignation. Consequently, this period can not be clubbed with the period of service during which he had rendered service with the present management This view also finds support from the decision in the case of Vijay Singh *versus* State of Rajasthan and another 1988 LAB I. C. 1125. It is thus, concluded that the workman had only worked with the present management with effect from 1st April, 1988 to 3rd August, 1988. He was thus, not entitled to retrenchment benefits envisaged under section 25-F of the Act. Resultantly, the termination of service of the workman by the management is legal and valid and he is not entitled to any relief. Issue No. 1 & 2 are decided accordingly in favour of the management and against the workman.

Relief :

15. In view of my findings on various issues, it is held that the termination of services of the workman by the management is legal and valid. He is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

Dated : 7th October, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3101, dated the 31st October, 1994

A copy with three spare, copies is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour Department. Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./831.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1247 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Indographic Art Machinery (P) Ltd., 22, Ballabgarh *versus* J.P. Sharma.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 290/92.

between

THE MANAGEMENT OF INDOGRAPHIC ART MACHINERY (P) LTD., 22, MATHURA ROAD, BALLABGARH

and

THE WORKMAN NAMELY SH. J. P. SHARMA S/O SH. LAKSHMI NARAYAN, SAHUPURA ROAD, UNCHAGAON, BALLABGARH.

Present :

Sh. M. S. Nagar, AR, for the workman.

Sh. R. C. Sharma, AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (heroin-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,- *vide* Haryana Goverment Endorsement No. 22648 dated 19th May, 1992 :-

"Whether the termination of services of Sh. J. P. Sharma is legal & justified. If not, to what relief, is he entitled to ?

2. The case of the claimant is that he had been in the employment of the management as a Foreman for the last above two decades and had never given any opportunity of complaint. His last drawn wages were Rs. 2750 p.m. His services were governed by the Certified Standing Orders of the company. The management in cross violation of the provisions of the Certified Standing Orders and rules of natural justice terminated his service,—*vide* letter dated 2nd January, 1992 without assigning any reason and justification. Although he had been designated as a Foreman but he was purely a workman as defined under section 2(S) of the Act. He had to perform manual work most of the time. He had no managerial or supervisory powers. His services could not be terminated without following the provisions of section 25-F and 25-N of the Act. He was neither paid retrenchment benefit envisaged under section 25-F of the Act nor any permission to retrench him from service was taken from the Government required under section 25-N of the Act. The impugned order terminating his services is thus, illegal and void. He is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated 11th November, 1992 taking three objections. Firstly that the claimant was not a 'workman' as defined in section 2(S) of the Act and as such the reference is liable to be rejected, secondly the workman had filed a civil suit claiming the same relief and so he is estopped from perusing and contesting the case. Thirdly the company stood completely ruined and no manufacturing activity had been carried on since January, 1992 and as such there existed no post on which the claimant could be re-appointed/reinstated. Hence the claimant is not entitled to the relief claimed by him.

4. The claimant submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties the following issues were framed :—

1. Whether the applicant does not fall within the definition of section 2(S) of the Act ?

2. As per terms of reference.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as follows :—

Issue No. 1 :

8. MW-1 Yasin Khan deposed that the claimant had been working with them as a Supervisor. He had been invested with powers of signing letters, granting increments, sanction of leave and to make recommendations for making new appointments. In the end, he deposed that 10-15 persons used to work under him.

9. On the other hand, the claimant deposed that he used to work as Foreman in the pattern shop. He used to be sole worker in the pattern shop and do the work by his own hands. No worker used to work under him. He also placed on file his appointment letter dated 12th October, 1973 Ex. W-1.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the management that as per provision of section 2(S) of the Act, a person who being employed in supervisory capacity draw wages exceeding 1600 p.m. is excluded from the term 'workman' defined in section 2(S) of the Act. In the instant case admittedly the claimant was appointed in supervisory capacity as a Foreman through letter Ex. W-1 and his salary was Rs. more than 1600 p.m. It is also proved from the statement of MW-1 Yasin Khan referred to above that the claimant had been actually working as a supervisor. That being so, he is not a workman defined under section 2(S) of the Act.

11. In reply, it has been contended on behalf of the claimant that the mere designation of Supervisor does not exclude a person from the definition of term 'workman'. It is the primary duty assigned to a person which is the deciding factor. The claimant has vouched that he used to do the job himself and no workman

used to be under him. MW-1 Yasin Khan did not produce the record pertaining to the alleged grant of increments by the claimant or sanction of leave of any worker by him. He also could not give details of the persons recommended by the claimant for fresh recruitment. The claimant was thus a 'workman' as defined under section 2(S) of the Act.

12. To shore the aforesaid position the authorised representative of the claimant relied on the decision in the case between M/s Blue Star Ltd. and N. R. Sharma and others 1975(31) FLR 102 in which it was held that the essence of supervisory nature of work under section 2(S) is the supervision of the one person over the work of others. Supervision contemplated direction and control. Ordinary supervision is not supervisory with in the meaning of section 2(S); rather supervision of higher type over ordinary supervision would be entitled to be called 'supervisory' within the meaning of section 2(S) of the Act.

13. In South Indian Bank Ltd., *versus* A. R. Chaku AIR 1964 Supreme Court 1522 their lordships of the Supreme Court referred to paragraph 332 of Shastri award which pointed out that the mere fact that a person was designated as a Accountant would not take him out of the category of the 'workman'. For the same reason, the mere fact that the claimant was designated and appointed as Foreman pattern shop will not bring him out from the definition of the term 'workman' defined in section 2(S) of the Act. A division bench of Madras High Court held in the case between Engineering Construction Corporation Ltd., Madras and Additional Labour Court, Madras and anothers 1980 LLJ 16 that the nature of work and not the nomenclature that is to be considered in deciding whether a person is workman or not. In this case, it was held that a person appointed as Foreman (carpentry) was a workman as defined under section 2(S) of the Act even though he was to do the job such as shuttering assigned to him with the help of 10—12 carpenters in accordance with the designs and specifications given. The management has not adduced any documentary evidence to prove that the claimant was invested with the powers of signing papers granting increment, sanctioning leave and making recommendations in new recruitment as stated by MW-1 Yasin Khan in his examination in Chief and as such this position can not be taken to be correct. Moreover in cross-examination MW-1 Yasin Khan firstly stated that the claimant was incharge of carpentry and pattern shop and 7 to 8 persons used to work in the pattern shop. In the next breath he stated that paint shop was also under the claimant and in that Paint Shop Rampal Painter, Akhey Singh Carpenter, Jagmohan Painter and Brij Lal Furnace Operator/incharge used to work. He however, concluded that no other worker except these four persons used to work under the claimant and all of these four persons used to work in the Paint Shop. He however, admitted that the name of the claimant did not exist in the attendance register of Paint Shop as the claimant was a foreman and a foreman had no fixed department. The claimant stated on oath that he used to work single handed in the Pattern Shop and one Mr. Bahugana was the incharge of Paint Shop. Admittedly the claimant was appointed as Foreman Pattern Shop. The management has not placed on record any other order to show that the claimant was made incharge of Paint Shop and Carpentry Shop. The statement made by MW-1 Yasin Khan is clearly self-contradictory and can not relied upon. It is thus concluded that the claimant used to work single handed as a Foreman Pattern Shop and he used to get patterns prepared from the market to meet the emergency of excessive work. Consequently, it is held that the claimant was a 'workman' as defined under section 2(S) of the Act. Issue No. 1 is decided against the management and in favour of the claimant.

Issue No. 2 :

14. It has been submitted on behalf of the management that it is clear from the condition No. 4 of the appointment letter Ex. W-1 that the services of the claimant could be terminated by giving him one month notice or one month salary in lieu there of. The services of the claimant were terminated under the provision of this clause of appointment letter and he was asked to collect his dues from the account section between 10 A.M. to 4 P.M. after submiting necessary clearance. The claimant would have also been paid the retrenchment compensation if he had gone to the account section as per direction of the management. Thus, the termination of services of the claimant by the management is legal and valid. To support this plea a reference has been made to the case of Hari Singh *Versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and anothers 1993 LLR 385 in which the workman had remained absent and was treated to have abandoned the job. Since the workman was not present, notice was sent to him by post at his local address and he was asked to contact the office of the company to collect his dues. In these circumstances, it was held that it meant nothing except that the workman was entitled to collect his dues as contemplated under section 25-F of the Act. It was further held that such an offer amounts to tendering the amount to the workman along with retrenchment notice especially when the office of the company is situated at the place of the residence of the workman.

15. It is not disputed that the claimant was entitled to get retrenchment compensation being a workman. In the case referred to above by the AR for the management, the management had clearly advised the workman to contact the office of the company during working days from 10 a.m. to 4 p.m. for the collection of his dues. In the instant case, the management advised the claimant to collect his dues if any,

from the account section. The words 'if any' used in this letter clearly indicate that the management did not want to pay retrenchment benefit to the claimant envisaged under Section 25-F of the Act. That being so, the law laid down in that case can not be applied on the facts of the instant case and the contention raised by the management is rejected.

16. It has been next urged on behalf of the management that the reference made by the Government itself to the court is illegal as the dispute regarding retrenchment is not covered in the Second Schedule and it is covered in the third Schedule. The reference should have been made to the Industrial Tribunal. Hence the workman is not entitled to any relief. To support this plea a reference has been made to the case between U.P. Electric Supply comapny Ltd., and R. K. Shukla 1960-70 Supreme Court case page 889.

17. The contention raised on behalf of the management can not be prevail as the proviso to section 10(1)(d) of the Act itself states that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 workmen, the appropriate Government may, if it so thinks fit, make the reference to the Labour Court under clause (c).

18. It is concluded that the termination of services of the claimant by the management without complying with the provision of Section 25-F of the Act is illegal and unjustified. Consequently, the claimant is entitled to reinstatement into service with continuity in service and full back wages. It is however, not disputed that the factory was closed in July, 1992. That being so, the claimant shall be deemed to have been retrenched on 31st July, 1992 on the closure o the factory. He be thus, given all benefits accuring to him on this count till that date. The award is passed accordingly.

U. B. KHANDUJA,

The 27th October, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3104, dated 31st October, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87- 6 Lab./832.—In pursuence of the provisions of Section 17 of the Industrial Disputes Act, 1942 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the followirg award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s Indographic Art Machinery Co. (P) Ltd., 22, Ballabgarh *versus* Sudershan Kumar :—

IN THE COURT OF SH U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 291/92.

between

M/S INDOGRAPHIC ART MACHINERY COMPANY (P) LTD., 22 MATHURA ROAD, BALLABGARH. .. *Management*

versus

SH. SUDERSHAN KUMAR GOYAL S/O LATE SH. INDER LAL GOYAL, C/O SH. MOHINDER GOYAL, ADVOCATE, HOUSE NO. 102, 100 FEET ROAD, CHAWALA COLONY, BALLABGARH (FARIDABAD) .. *Workman*

Present :

Sh. M. S. Nagar, AR, for the workman.

Sh. R. C. Sharma, AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government, Endorsement No. 22663-69 dated 19th May, 1992 :—

"Whether the termination of services of Sh. Sudershan Kumar Goyal is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he had been in the employment of the management as a Planning Asstt. for the last about nine years and had never given any opportunity of claimant. His last drawn wages were Rs. 1330/- p.m. His services were governed by the Certified Standings of the company. The management in gross violation of the provisions of the certified standing orders and rules of natural justice terminated his services,—*vide* letter dated 2nd January, 1992 without assigning any reason and justification. His services could not be terminated without following the provisions of Section 25-F and 25-N of the Act. He was neither paid retrenchment benefit envisaged under Section 25-F of the Act nor any permission to retrench him from service was taken from the Govt. required under Section 25-N of the Act. The impugned order terminating his services is thus, illegal and void. He is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated 11th November, 1992 taking two preliminary objections. Firstly that the workman had filed a civil suit claiming the same relief and so he is estopped from perusing and conteting the case. Secondly the company stood completely ruined and no manufacturing activity had been carried on since January 1992 and as such there existed no post on which the workman could be re-appointed reinstated. It was further mentioned that the workman was not governed by Certified Standings Orders of the company and was only governed by the contract of service. His services were terminated as per conditions embodied in his appointment letter and so the impugned action of the management is legal and valid.

4. The workman submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties the following issues was framed :

1. Whether the termination of services of Sh. Sudershan Kumar Goyal is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the sides have led evidence. (Which was recorded in the case Reference No. 290/92, J. P. Sharma *Versus* Indographic Act Machinery Co. (P) Ltd.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence of record. My findings on the aforesaid issue are as follows :—

Issue No 1 :

8. It has been submitted on behalf of the management that the workman admitted in rejoinder that he had filed a civil suit which was dismissed as withdrawn thus, he was estopped from raising the dispute under the Act having availed of alternative remedy. In reply, it has been submitted that the claimant had filed the civil suit for restraining the management from disposing alienating the property but the same was withdrawn as the management had alienated their properties during the pendency of the suit. This plea of the workman has to prevail as MW-1 Yasin Khan admitted in his statement made in the court that the workman had filed the civil suit restraining the management from disposing/alienating properties. The workman had not filed the suit claiming the relief for his reinstatement and as such it has no effect on the present proceedings. Consequently, the objection taken on behalf of the management is not tenable.

9. It has next been contended on behalf of the management that the services of the workman were terminated as per terms and conditions of his appointment and as such the impugned action is legal and valid In reply, it has been submitted that it is not disputed that the workman had rendered service for a period of about 9 years prior to the date of termination of his services. It is also not disputed that the workman was a workman defined under Section 2(S) of the Act and as such he was governed by the provision of the Act. In this situation the services of the workman could not be terminated simply as per terms and conditions of his appointment. His services could be terminated by following the provisions of Section 25-F of the Act which

were not complied with, thus, the impugned action of the management is illegal and unjustified. There is merit in the submission made on behalf of the workman because the terms and conditions of appointment letter could not have over riding effect to the provision of the Act. So the contention raised on behalf of the management can not be accepted.

10. Faced with the aforesaid position Sh. R. C. Sharma authorised representative of the management urged that it is clear from the impugned order that the workman was asked to collect his dues from the Account Section between 10 a.m. to 4 p.m. after submitting necessary clearance. The workman would have been paid the retrenchment compensation if he had gone to the Account section as per direction of the management.Thus it stands proved that the management had complied with the provision of Section 25-F of the Act.To support this plea a reference has been made to the case of Hari Singh *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and anothers 1993 LLR 385 in which the workman had remained absent and was treated to have abandoned the job. Since the workman was not present, notice was sent to him by post at his local address and he was asked to contact the office of the company to collect his dues.In these circumstances, it was held that it mean nothing except that the workman was entitled to collect his dues as contemplated under Section 25-F of the Act. It was further held that such an offer amounts to tendering the amount to the workman along with retrenchment notice especially when the office of the company is situated at the place of the residence of the workman.

11. In the case referred to above, the management had clearly advised the workman to contact the office of the company during the working days from 10 a.m. to 4 p.m. for the collection of his dues .In the instant case, the management advised the workman to collect this dues any from the Account Section. The words 'if any used in this letter clearly indicate that the management did not want to pay retrenchment benefit to the workman envisaged under Section 25-F of the Act. That being so, the law laid down in that case can not be applied on the facts of the instant case and the contention raised by the management is rejected.

12. It has been next urged on behalf of the management that the reference made by the Govt. itself to the court is illegal as the dispute regarding retrenchment is not covered in the second Schedule and it is covered in the Third Schedule. The reference should have been made to the Industrial Tribunal. Hence the workman is not entitled to any relief. To support this plea a reference has been made to the case between U.P. Electric Supply Company Ltd., and R. K. Shukla 1960-70 Supreme Court case page 889.

13. The contention raised on behalf of the management can not be prevail as the proviso to Section 10(1(c) of the Act itself states that where the dispute relates to any matter specified in the Third Schecule and is not likely to effect more than 100 workman, the appropriate Govt. may if it so thinks fit, make the reference to the Labour Court under clause (c).

14 If is concluded that the termination of services of the workman by the management without complying with the provision of Section 25-F of the Act is illegal and unjustified Consequently, the workman is entitled to reinstatement into service with continuity in service and full back wages. It is however, not disputes that the factory was closed in July 1992. That being so, the workman shall be deemed to have retrenched on 31st July, 1992 on the closure of the factory He be thus, given all benefits accuring to him on this count till that date. The award is passed accordingly.

U. B. KHANDUJA,

The 27th October, 1994.

Presiding Officer,
Labour Court-II,
Faridabad

Endorsement No. 3152, dated 31st October, 1994,

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Govt. Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.